

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GREGER LEASING CORP., a Nevada
corporation,

Plaintiff,

v.

Barge PT. POTRERO, official number
523213, *in rem*, TED BUHL and JANE
DOE BUHL, individually, and the
marital community composed thereof;
BUHL DIVING & SALVAGE, a sole
proprietorship, *in personam*

Defendants.

AND ALL RELATED ACTIONS

No. 05-5117 SC

ORDER RE: CLAIMANTS'
MOTION TO QUASH
ARREST OR IN THE
ALTERNATIVE FOR COSTS
SECURITY

I. INTRODUCTION

Claimants in this case, Riverview Equipment Company LLC and Jerico Products, Inc. ("Claimants"), filed this motion on January 13, 2005, seeking an adversary hearing pursuant to Federal Rule of Civil Procedure Supplemental Admiralty Rule E(4)(f) ("Supplemental Rule E(4)(f)") and Local Admiralty and Maritime Rule 4-8 (Local Maritime Rule 4-8"). According to Claimants' moving papers and declarations attached thereto, the adversary hearing is necessary to determine whether Plaintiff in this case, Greger Leasing Corporation ("Plaintiff" or "Greger Leasing"), has a valid maritime lien on the in rem Defendant in this case, the Barge Pt. Potrero, which was arrested by the United States Marshal Service on December 14, 2005. The arrest was conducted pursuant to an

1 Order of this Court that was issued following the filing of a
2 verified complaint and appropriate motions on December 12, 2005.

3 Claimants now assert that Plaintiff does not have and never
4 had a valid maritime lien on the Barge Pt. Potrero, and, on that
5 basis, have requested an adversary hearing to prove their claim
6 and have the arrest quashed. See Docket #25. In the alternative,
7 Claimants request that the Court order Plaintiff to post a bond in
8 an amount greater than or equal to \$25,000.00, because, Claimants
9 assert, Plaintiff is a newly-formed, out-of-state corporation that
10 allegedly does not maintain a substantive presence in the state of
11 California, and is therefore a threat to avoid satisfying whatever
12 financial obligations it might incur in connection with the
13 instant dispute, including any damage caused to the Barge or the
14 Haystack Bridge in which the Barge became lodged during the arrest
15 and attempted transfer of the vessel to Pier 50 in San Francisco.
16 Id. Claimants assert that they are entitled to a hearing upon
17 three days notice to Plaintiff pursuant to Supplemental Rule
18 E(4)(f) and Local Maritime Rule 4-8.

19 Plaintiff has raised substantive and procedural objections to
20 Claimants' motion, asserting that Plaintiff does have a valid lien
21 on the Barge;¹ that he is not estopped from claiming such a lien;
22 that Claimants waived their opportunity to request an adversary
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24 ¹ Plaintiff has also objected to Claimants' filings because,
25 he asserts, the documents exceed the 25-page limit established by
26 the Civil Local Rules. However, the Court notes that the 25-page
27 limit applies to the memorandum of points and authorities filed in
28 support of or in opposition to a motion, and does not limit the
length of documentation filed in support of the memorandum, such as
declarations or affidavits. See Local Rules 7-2, 7-3, 7-4, & 7-5.

1 hearing by failing to raise the issue at either of several post-
2 arrest proceedings before the Court; and that, in any event,
3 Supplemental Rule E(4)(f) does not contemplate an adversary
4 hearing one month after arrest of a vessel. See Docket # 32.

5 **II. DISCUSSION**

6 Supplemental Rule E(4)(f) provides that "[w]henever property
7 is arrested or attached, any person claiming an interest in it
8 shall be entitled to a prompt hearing at which the plaintiff shall
9 be required to show why the arrest or attachment should not be
10 vacated or other relief granted consistent with these rules."
11 Local Maritime Rule 4-8 provides that the adversary hearing called
12 for in Supplemental Rule E(4)(f) "shall be conducted upon 3 days
13 written notice to plaintiff, unless otherwise ordered."

14 Although neither rule nor the sparse case law applying the
15 rules indicates that a party waives its right to an adversary
16 hearing by failing to request one immediately after the arrest,
17 the Advisory Committee notes to the 1985 Amendment to Supplemental
18 Rule E(4)(f) indicate that the rule was implemented in order to
19 "satisfy the constitutional requirement of due process by
20 guaranteeing to the shipowner a prompt post-seizure hearing...."
21 (emphasis added). The wording of this explanatory sentence
22 indicates that the word "prompt" is meant to describe the temporal
23 interval between the arrest and the hearing, rather than the
24 interval between the motion for the hearing and the hearing
25 itself. Similarly, a review of the several reported cases that
26 have involved adversary hearings under Supplemental Rule (E)(4)(f)
27 indicates that such hearings generally take place within several
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1 days of the arrest. See Marubeni America Corp. v. M/V Unity, 802
2 F. Supp. 1353 (D. Md. 1992); see also Erne Shipping Inc. v. HBC
3 Hamburg Bulk Carriers GmbH & Co. KG, ____ F. Supp. 2d ____, 2006 WL
4 52713 (S.D.N.Y. 2006).

5 Although Local Maritime Rule 4-8 provides for an adversary
6 hearing "upon 3 days written notice to plaintiff," the rule
7 specifically references the "adversary hearing following
8 arrest...that is called for in...Rule E(4)(f)." Thus, if the
9 adversary hearing contemplated by Rule E(4)(f) is to be held
10 promptly after arrest, the three-day notice period described by
11 Local Maritime Rule 4-8 merely quantifies what "prompt" means in
12 this District. But where E(4)(f) is rendered inapplicable by the
13 passage of over a month's time, so too is Local Maritime Rule 4-8
14 and its notice provisions.

15 In any event, and as an alternative basis for sustaining the
16 Court's ruling, Local Maritime Rule 4-8 provides that the Court
17 may order an alternative notice period to the three days set forth
18 in the Rule. Because the Court finds that Claimants have raised
19 several different arguments that may be dispositive of the rights
20 and obligations of both Plaintiff and Claimants, the Court finds
21 that it would be unwise to rule on such issues absent a full
22 briefing schedule.

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1 **III. CONCLUSION**

2 Accordingly, Claimants' motion is DENIED. The Court will
3 grant the parties leave to renotice and refile their motion in
4 compliance with the Local Rules governing noticing and filing of
5 motions.

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7 IT IS SO ORDERED.

8 Dated: January 23, 2006

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UNITED STATES DISTRICT JUDGE
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